

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOYCE JONAS,

Plaintiff,

vs.

No. CIV 09-0091 JB/WPL

BOARD OF COMMISSIONERS OF LUNA COUNTY,
LUNA COUNTY SHERIFF'S OFFICE,
DEPUTY SHERIFF DONNIE DANIELS,
and DEPUTY SHERIFF DON HOOLAN,

Defendants.

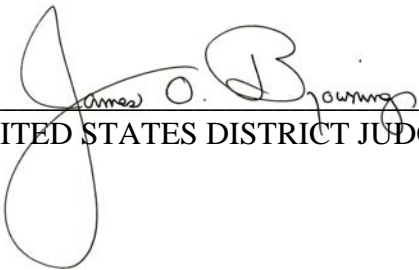
ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion to Amend Complaint, filed March 4, 2010 (Doc. 78). The Court held a hearing on March 5, 2010. The primary issue is whether the Court should allow Plaintiff Joyce Jonas to amend the allegations in her Complaint. Because the parties agree that Jonas can accomplish her desired result by asserting two theories under an existing claim, the Court denies the motion without prejudice to Jonas bringing a second theory of unlawful seizure under the Fourth Amendment.

In her motion, Jonas asks the Court to allow her to change Count III of her Complaint. See Motion at 1-2. Count III currently asserts a claim for false imprisonment under the Fourteenth Amendment to the Constitution of the United States, see Complaint for Damages from Violations of Civil and Constitutional Rights, the New Mexico Tort Claims Act, and New Mexico Common Law at 7, filed January 28, 2009 (Doc. 1), and Jonas wishes to amend it to assert a claim for false imprisonment under the Fourth, rather than the Fourteenth, Amendment. See Motion at 1-2. The Complaint already asserts a claim of unlawful seizure under the Fourth Amendment. See Complaint

at 5 (Count I). The parties agreed during the hearing that Jonas' proposed new claim could be asserted as a separate theory under the existing Count I and that the amendment is not necessary. See Transcript of Hearing at 30:12-33:18 (taken March 5, 2010)(“Tr.”)(Court, Mozes, Anderson).¹ Pursuant to that agreement, and with assurance from the Court that Jonas would be permitted to assert both theories of unlawful seizure under Count I, Jonas' counsel agreed to the Court denying the motion. See Tr. at 33:1-21 (Court, Mozes). The Court will therefore deny Jonas' motion without prejudice to her asserting two theories of Fourth-Amendment unlawful seizure under Count I. Furthermore, no separate claim under Count III will go to the jury.

IT IS ORDERED that the Plaintiff's Motion to Amend Complaint is denied without prejudice to Plaintiff Joyce Jonas asserting two theories of unlawful seizure under Count I of her Complaint.


UNITED STATES DISTRICT JUDGE

Counsel:

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Albuquerque, New Mexico

Attorney for the Plaintiff

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Attorneys for the Defendants

¹ The Court's citations to the transcript of the hearing refer to the court reporter's original, unedited version. Any final transcript may contain slightly different page and/or line numbers.